



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

November 10, 2009

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Kenji Ebanks**
Tax Registry No. 915661
Housing Borough Manhattan
Disciplinary Case No. 84636/08

GHAN

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on June 10, 2009 and was charged with the following:

DISCIPLINARY CASE NO. 84636/08

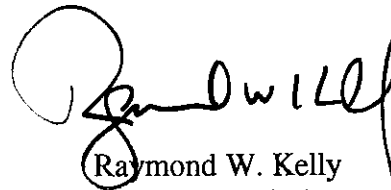
1. Said Police Officer Kenji Ebanks, assigned to the 42nd Precinct, on or about March 11, 2008, while off-duty, did engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Officer did wrongfully contact Police Officer Sean Reddy via cellular phone stating in sum and substance, "Do you know what IAB is? You are going to get a visit from them soon," causing Police Officer Sean Reddy to experience annoyance and alarm. (As amended)

PG 203-10, Page 1, Paragraph 5

PROHIBITED CONDUCT

In a Memorandum dated September 8, 2009, Assistant Deputy Commissioner Vinal found Respondent Ebanks GUILTY of the sole Specification and recommended the forfeiture of 20 Vacation days as the disciplinary penalty. Having read the Memorandum and analyzed the facts of this matter, I approve the finding, but disapprove the penalty.

The Respondent's actions and misconduct here, combined with his prior disciplinary matter involving similar behavior, merits an increased penalty. Therefore, Respondent Ebanks is to forfeit 30 Vacation days.


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

September 08, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Kenji Ebanks
Tax Registry No. 915661
Housing Borough Manhattan
Disciplinary Case No. 84636/08

The above-named member of the Department appeared before me on June 10, 2009, charged with the following:

1. Said Police Officer Kenji Ebanks, assigned to the 42nd Precinct, on or about March 11, 2008, while off-duty, did engage in conduct prejudicial to the good order efficiency and discipline of the Department, to wit: said Officer did wrongfully contact Police Officer Sean Reddy via cellular phone stating in sum and substance, "Do you know what IAB is? You are going to get a visit from them soon," causing Police Officer Sean Reddy to experience annoyance and alarm. (*As amended*)

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty as charged.

COURTESY • PROFESSIONALISM • RESPECT

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that in September, 2007, the Respondent began dating Wendy Gonzalez and that their dating relationship continued into March, 2008.

The Department's Case

The Department called Police Officer Sean Reddy and Sergeant David Thomas as witnesses.

Police Officer Sean Reddy

Police Officer Sean Reddy, who is assigned to the 104 Precinct, recalled that his first contact with Wendy Gonzalez took place via computer when he accessed an "AOL" (America Online) chat room. After chatting online, they spoke on the telephone and then began dating. Their relationship continued until May, 2008, when they broke up.

On March 11, 2008, at about 1000 hours, Reddy received a call on his cell phone from a phone number he did not recognize. When he answered the call, the caller hung up on him. About an hour later he received another call on his cell phone from a different phone number that he also did not recognize. When he answered this call by saying, "Hello," the male caller, whose voice Reddy did not recognize, asked him, "Do you know what IAB is?" Reddy, who described himself as confused by this question, responded, "What?" The caller then repeated, "Do you know what IAB is?" Reddy responded, "Yeah." The caller then said, "Well, you will be getting a visit from them soon." The caller then hung up without identifying himself.

Reddy testified that he immediately contacted Wendy Gonzalez and asked her if she recognized either of the phone numbers that he had received calls from. She told him that she did not recognize either of the phone numbers but that she would check her cell phone to see if she had received any calls from either of the phone numbers. Reddy testified that he then contacted his supervisor, Lieutenant Dominick Valenti, and provided him with the phone numbers that he had received calls from and related to him what the caller had said to him. Reddy testified that he considered the call to be “threatening, harassing, annoying and very upsetting.” Later that day, Gonzalez called him and told him that she had received “two hang up phone calls” from the same phone numbers that he had received calls from that day. She later told him that she had received a call from “Officer Ebanks” who had asked her, “Did your boyfriend receive a call today?” Reddy testified that he then contacted his supervisor and related what Gonzalez had told him.

Reddy recalled that later that day, he was called at home and told to report to the 44 Precinct where he was subjected to an official Department interview and learned that he was under investigation. He testified that as a result of the call he received on March 11, 2008, he became alarmed and he “was actually fearful for my children” and that he warned them not to talk to strangers. He ultimately received and signed a “B Command Discipline” (CD) and forfeited ten vacation days for unauthorized use of a Department computer because he had used the computer for the personal purpose of ascertaining whether an individual was a member of the service (MOS).

On cross-examination, he denied that he was overstating the annoyance, alarm and fear that the call had aroused in him. He acknowledged that the substantive

information that the caller had related to him, i.e. that he was being investigated by the Department's Internal Affairs Bureau (IAB), he later learned was accurate. Reddy testified that he had immediately contacted Gonzalez because he thought it was possible that the call was related to his relationship with her. Reddy testified that he perceived the call "as a threat" because the nature of this anonymous call was so out of the ordinary that "it was very alarming." He testified that at that time he did not perceive a connection between the call and his act of accessing Department computer records for the personal purpose of ascertaining whether DeFrancis was a MOS, an act he engaged in because Gonzalez had told him that she was receiving harassing phone calls from DeFrancis and he was concerned for her welfare. He last saw Gonzalez in April, 2009, although she telephoned him two weeks ago. Gonzalez never told him that she had dated a police officer named Kenji Ebanks.

Sergeant David Thomas

Sergeant David Thomas, who has been assigned to Personal Bureau's Investigations Unit since 2004, testified that in 2007 he was assigned to investigate an IAB log that Detective Joseph DeFrancis had made a complaint that someone had accessed a Department computer, obtained personal information regarding his residence address, his marital status, and the number of children he had, and had provided this information to Wendy Gonzalez, a woman he had dated. Sergeant Thomas obtained Gonzalez' telephone number from DeFrancis and then used this number to ascertain Gonzalez' residence address in the Bronx. He went to Gonzalez' residence and

interviewed her. She initially denied knowing DeFrancis but later during the interview she admitted that she knew a man whose first name was Joe.

Thomas ultimately determined that Reddy had engaged in unauthorized use of a Department computer because he had used the computer for a personal purpose, and that the Respondent had engaged in the misconduct which is the subject of this trial. Reddy received and signed a "B Command Discipline" (CD) and forfeited ten vacation days.

On cross-examination, he testified that he ascertained that Gonzalez met police officers via an online chat line at a website called "I Love Cops," that she was dating between two and five officers at any given time and that she would play them off against each other by telling an officer she was dating that another officer was pursuing her even though she wanted him to leave her alone. Thomas concluded that Gonzalez manipulated Police Officer Reddy and the Respondent and that "somehow she was using these two guys." Gonzalez falsely told him that she did not speak to cops, that her roommate probably borrowed her phone and that her roommate sometimes used her name to meet police officers online.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The Respondent, who is assigned to PSA 4, testified that Gonzalez told him that her previous boyfriend was also a New York City police officer, that he was assigned to the Medical Division and that his first name was Sean. Gonzalez also told him that she

and Sean had gone through a "more or less" amicable breakup and that they were now just friends. Gonzalez further told him that Sean still "constantly" placed telephone calls to her, both at her home telephone number and to her cell phone, and that "more or less she felt harassed" by Sean's constant calls to her.

The Respondent testified that sometimes when he was with Gonzalez she would receive a telephone call from Sean. Based on what he overheard Gonzalez saying to Sean during these phone conversations, the Respondent developed a "suspicion" that Sean was engaging in misconduct by using a Department computer for a personal purpose in that he would "run names" to see if the name matched that of a MOS and then would provide this information to Gonzalez.

The Respondent recalled that one week prior to March 11, 2008, he was at a McDonald's restaurant with Gonzalez's cousin Martin. When he became aware that Martin was in possession of Gonzalez's cell phone, the Respondent took Gonzalez's cell phone from Martin and examined the list of incoming calls. He saw a call from "Sean" which listed a cell phone number. He memorized this telephone number which was 917 273 7111. The Respondent testified that he decided to break up with Gonzalez because he had "caught her in numerous lies" and because he "had suspicions that she was seeing someone else."

On March 11, 2008, the Respondent called telephone number 917 273 7111 from a pay phone. When a male voice answered, the Respondent asked him, "Do you know what IAB is? They are going to come looking for you." The Respondent then hung up. The Respondent testified that his purpose in making this call was to get Sean to "stop his misconduct and make sure that he doesn't run my name." He was not trying

to scare Sean or harass him. The Respondent explained that he "was afraid that he would make allegations against me, run my name also and more or less harass me" because he was a jealous ex-boyfriend. Later that day, the Respondent was told he was being placed on modified assignment. He was then transferred from the 42 Precinct to the Housing Bureau. He remains on modified assignment.

On cross-examination, the Respondent testified that he placed his call to Sean from a pay phone because "my cell phone had lost its charge," he had no charger with him and he was "far away from my home." He acknowledged that in November, 2007, he was present inside Gonzalez' residence when an investigator came by to interview Gonzalez about "Sean running names." Since the interview took place in the hallway and he remained inside the residence, he was not certain whether the interviewer was a Department investigator.

He denied that it was Gonzalez, not him, who broke off their relationship. He testified that she never accused him of harassing her, that she never told him that she was in love with Reddy, and she never told him that she did not want to see him anymore. When he initially called Sean on March 11, 2008, he hung up without speaking because "the words didn't come out of my mouth." He then "put my thoughts together" and called him back about an hour later. Later that day, when he was at Gonzalez' mother's residence, Department investigators arrived and told him that he was being placed on modified assignment. He testified that he suspected that Gonzalez was lying to him when she denied that she was still seeing Sean. He saw Sean once, on Thanksgiving Day in November, 2007, but he did not speak to him.

FINDINGS & ANALYSIS

It is charged that on March 11, 2008, the Respondent engaged in conduct prejudicial to the good order efficiency and discipline of the Department by wrongfully making a cell phone call to Police Officer Sean Reddy in which he told Reddy, in sum and substance, "Do you know what IAB is? You are going to get a visit from them soon," which caused Reddy to experience annoyance and alarm.

The Respondent acknowledged that on March 11, 2008, he called "Sean," who he believed was a fellow officer, that he asked him, "Do you know what IAB is?" and that he then told him, "They are going to come looking for you." Since the Respondent is charged with telling Reddy "in sum and substance, 'You are going to get a visit from them soon,'" the Respondent's version of the specific words he used is, in sum and substance, the equivalent of the words he is charged with using.

The Respondent's defense rests on his claims that he did not believe that he was doing anything improper in delivering this warning to Reddy; that the call that the Respondent placed to Reddy was not designed to cause Reddy to experience annoyance and alarm; and that making this call did not constitute any type of misconduct.

The Respondent's claim that he did not believe that he was doing anything improper in warning Reddy that IAB is "going to come looking for you" is belied by the fact that he called from a pay phone and by the fact that he delivered his message anonymously. His claim that the only reason that he placed the call from a pay phone was because his cell phone had lost its charge, he had no charger with him, and he was far away from home, is not credible because the Respondent had plenty of time to

recharge his phone since he had memorized Reddy's cell phone number a full week before he actually called him.

Although Respondent's counsel argued that the call that the Respondent placed to Reddy was not designed to make Reddy experience annoyance and alarm, the Respondent's own description of his anonymous, ominous warning to Reddy (that IAB was about to come looking for him) could cause even a member of the service who believed he had done nothing wrong to experience annoyance and alarm. Thus, Reddy's testimony that he was annoyed and alarmed by this call is plausible and believable.

Also, although the Respondent implied that he had an altruistic purpose in making this call in that he was trying to help "Sean" by giving him a heads up that IAB was looking at him, the Respondent admitted that he had a selfish motive for making this call. He testified that he wanted Reddy to cease accessing Department computer programs containing information about MOS because he was afraid that he would run his name.

Finally, Respondent's counsel argued that the call that the Respondent placed to Reddy does not constitute any type of misconduct. I find that the Respondent's action of asking someone who he then believed to be (and who in fact was) a fellow officer, "Do you know what IAB is?" and then warning him, "They are going to come looking for you," constitutes engaging in conduct prejudicial to the good order, efficiency or discipline of the Department. As the Police Commissioner has stated,¹ although Patrol Guide section 203-10 does not enumerate specific acts of misconduct, the provision's purpose is to prohibit conduct that, although not specifically mentioned in the Patrol

¹ In his May 27, 2003 memorandum regarding Disciplinary Case Nos. 75201/99, 75202/99 & 75203/99.

Guide or in other Department rules and regulations, “is clearly wrong and contrary to the training and practices of a reasonable police officer.”

I find that the record establishes that the Respondent clearly knew that he was acting wrongfully when he told Reddy that IAB is “going to come looking for you,” and that he hoped that Reddy would be so alarmed by this warning that he would stop “running” names in Department computers before he “ran” the Respondent’s name, an act that would implicate the Respondent in IAB’s investigation.

The Respondent is found Guilty as charged.

PENALTY

In order to determine an appropriate penalty, the Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on June 30, 1995. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of engaging in conduct prejudicial to the good order, efficiency or discipline of the Department in that he made an anonymous telephone call to a person he believed was a fellow officer and told this officer, in sum and substance, “Do you know what IAB is? You are going to get a visit from them soon,” which annoyed and alarmed the officer.

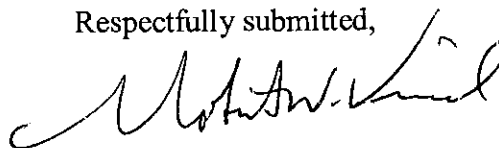
The Assistant Department Advocate (ADA) recommended that the Respondent be required to forfeit 30 vacation days. In support of her penalty recommendation, the ADA noted that the Respondent has a prior disciplinary record and she also cited Disciplinary

Case No. 82220/06 (approved on February 12, 2008). The ADA accurately stated that in this case a four-year member with no prior disciplinary record was required to forfeit 20 vacation days after he pleaded guilty to a charge that he made several harassing telephone calls to a woman with whom her baby's father was staying. However, the ADA neglected to mention that this 20-day penalty also covered the member's additional, separate misconduct of going to the woman's residence without authorization while the member was on sick report.

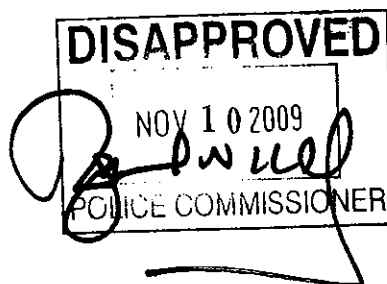
Nonetheless, because this case marks the second occasion on which the Respondent has engaged in off-duty conduct prejudicial to the good order, efficiency or discipline of the Department by making a telephone call which annoyed or alarmed the recipient of his call (as noted in the attached confidential memorandum), the Respondent should receive a penalty which is consistent with progressive discipline.

Thus, it is recommended that the Respondent be required to forfeit 20 vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER KENJI EBANKS
TAX REGISTRY NO. 915661
DISCIPLINARY CASE NO. 84636/08

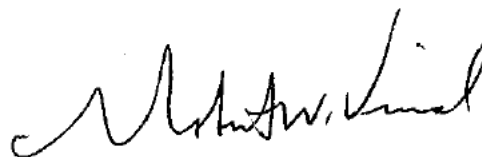
The Respondent received an overall rating of 4.0 on his 2008 annual performance evaluation, 4.0 on his 2007 annual evaluation and 4.0 on his 2006 evaluation.

He has been awarded one Meritorious Police Duty medal. [REDACTED]
[REDACTED]

He has a prior formal disciplinary record. In 2006, he forfeited 15 vacation days after he pleaded guilty to having engaged in conduct prejudicial to the good order efficiency or discipline of the Department while off duty in that, with intent to harass, annoy, threaten or alarm another person, he left threatening and/or inappropriate voice mail messages.

On May 3, 2007, he was placed in Disciplinary Monitoring - Level II based on his overall record.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner - Trials